

Message Text

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ORIGIN SCSE-00

INFO OCT-01 ARA-10 ISO-00 L-02 H-02 /015 R

DRAFTED BY SCA:SCS:WPCHASE:SAS

APPROVED BY SCA:SCS:WPCHASE

----- 123459

P 221746Z APR 75

FM SECSTATE WASHDC

TO AMEMBASSY MEXICO PRIORITY

UNCLAS STATE 091922

E.O. 11652:N/A

TAGS: CASC, MX

SUBJECT: MEXICAN CRIMINAL PROCEDURES

FOR PETERSON FROM CHASE

1. FOLLOWING IS DRAFT OUTLINE OF MEXICAN CRIMINAL PROCEDURES. ANY COMMENTS WOULD BE APPRECIATED. WE INTEND GIVE COPY THIS, WITH WHATEVER REVISIONS ARE APPROPRIATE, TO HOUSE COMMITTEE.

2. TEXT: (1) ARREST. A COMPLAINT IS FILED WITH THE DISTRICT ATTORNEY -- MINISTERIO PUBLICO. IF THERE IS CLEAR EVIDENCE THAT A CRIME HAS BEEN COMMITTED - THE JUDICIAL POLICE ARE DIRECTED BY THE DISTRICT ATTORNEY TO ARREST THE SUSPECT. MORE FREQUENTLY, IN THE CASE OF DRUG OFFENDERS, IF THE SUSPECT IS APPREHENDED IN THE ACTUAL COMMISSION OF A CRIME, E.G., IN THE POSSESSION OF DRUGS, THE SUSPECT MAY BE ARRESTED BY ANY PERSON WITHOUT THE PREVIOUS FILING OF A COMPLAINT.

(2) DETENTION. THE SUSPECT MAY BE DETAINED FOR UP TO THREE DAYS BY THE POLICE WHILE THE DISTRICT ATTORNEY CONDUCTS A PRELIMINARY INVESTIGATION OF THE CASE. THE AUTHORITIES HAVE THE DISCRETION TO ALLOW THE SUSPECT'S "DEFENSOR" (LAWYER OR TRUSTED RELATIVE OR FRIEND) TO BE PRESENT DURING THIS PERIOD, BUT THE "DEFENSOR'S" PRESENCE MERELY ALLOWS HIM TO OBSERVE THE SUSPECT'S TREATMENT. HE MAY NOT ADVISE

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OR REPRESENT THE SUSPECT.

THE SUSPECT HAS THE RIGHT UNDER THE MEXICAN CONSTITUTION TO REMAIN SILENT, BUT IF HE MAKES A STATEMENT IT MAY BE

USED IN EVIDENCE AT HIS TRIAL. SUCH A STATEMENT MAY SUBSEQUENTLY BE RETRACTED OR CHANGED BY THE SUSPECT IN A STATEMENT DURING THE TRIAL. THE COURT WOULD THEN DECIDE WHICH OF THE CONFLICTING STATEMENTS IT CHOSE TO BELIEVE.

IF THE SUSPECT'S LEGAL RIGHTS ARE VIOLATED, E.G., BY MIS-TREATMENT, HE HAS THE RIGHT SUBSEQUENTLY TO BRING A CIVIL OR CRIMINAL ACTION AGAINST THE VIOLATOR, DEPENDING ON THE SEVERITY OF THE VIOLATION, BUT THE CASE AGAINST HIM IS NOT VOIDED. IF HIS LEGAL RIGHTS ARE VIOLATED, THE SUSPECT MAY ALSO PETITION FOR AN AMPARO, WHICH IS TRIED IN A SPECIAL COURT. THIS PETITION IS TO INITIATE A LEGAL ACTION BY THE SPECIAL COURT WHICH COULD TERMINATE A CASE OR ORDER A GOVERNMENT OFFICIAL EITHER TO TAKE A CERTAIN ACTION OR TO FORBID HIM FROM A CERTAIN COURSE OF ACTION. ALTERNATIVELY THE SPECIAL COURT COULD INSTITUTE SOME OTHER MEANS FOR CORRECTING THE VIOLATION OF THE ACCUSED'S RIGHTS.

(3) COMMITMENT. WITHIN THE THREE-DAY DETENTION PERIOD THE SUSPECT IS BROUGHT BEFORE THE COURT. HE IS FORMALLY NOTIFIED OF THE CHARGES AGAINST HIM AND AGAIN INFORMED OF HIS RIGHT TO RETAIN COUNSEL AND TO REMAIN SILENT. THE JUDGE EXAMINES THE EVIDENCE, INCLUDING ANY STATEMENT THE SUSPECT MAY WISH TO MAKE WITH RESPECT TO THE CHARGES.

FOLLOWING THE COMMITMENT HEARING THE JUDGE MUST DECIDE WITHIN THREE DAYS WHETHER OR NOT TO HOLD THE SUSPECT FOR TRIAL. IF THE DECISION IS NOT MADE WITHIN THAT PERIOD, THE SUSPECT MUST BE RELEASED, BUT HE MAY BE REARRESTED LATER IF NEW EVIDENCE IS UNCOVERED. IF THE EVIDENCE AGAINST THE SUSPECT IS INSUFFICIENT, THE JUDGE MUST ACQUIT THE SUSPECT. IF THE EVIDENCE IS SUFFICIENT, THE JUDGE ISSUES A DECREE CONVERTING THE DETENTION TO PREVENTIVE IMPRISONMENT. DURING THIS HEARING THE SUSPECT MAY FILE WHATEVER MOTIONS ARE APPROPRIATE.

(4) TRIAL. THE SUSPECT ENTERS HIS PLEA, WHICH CAN BE UNCLASSIFIED

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CHANGED AT ANY TIME DURING THE TRIAL. BOTH THE PROSECUTION AND THE DEFENSE PREPARE THEIR CASES. THE SUSPECT IS CONSTITUTIONALLY GUARANTEED SUFFICIENT TIME TO PREPARE HIS DEFENSE.

UNDER MEXICAN LAW, BAIL IS ALLOWED ONLY IN CASES WHERE THE MAXIMUM POSSIBLE SENTENCE DOES NOT EXCEED FIVE YEARS. NARCOTICS CASES ARE USUALLY TRIED UNDER SECTIONS OF THE CRIMINAL CODE PROVIDING FOR SENTENCES IN EXCESS OF FIVE

YEARS, WITH THE RESULT THAT BAIL IS NOT ALLOWED.

EVIDENCE IS PRESENTED TO THE COURT BY BOTH SIDES AS IT IS

DEVELOPED RATHER THAN IN A SINGLE HEARING OR GROUP OF HEARINGS AS IS DONE IN THE COMMON LAW. THE COURT PLAYS AN ACTIVE ROLE IN RECEIVING EVIDENCE AND DIRECTING THE INVESTIGATION. THE EVIDENCE IS IN DOCUMENTARY FORM. THE SUSPECT MAY, OF COURSE, SUBMIT A STATEMENT. AT THE FINAL HEARING THE SIGNIFICANT EVIDENCE IS READ BY THE CLERK OF COURT AND FINAL ARGUMENTS ARE MADE BY BOTH SIDES. THE VERDICT AND SENTENCE MUST BE HANDED DOWN WITHIN FIFTEEN DAYS OF THE FINAL HEARING. THE MEXICAN CONSTITUTION PROVIDES THAT THE TRIAL MUST BE COMPLETED WITHIN ONE YEAR FROM THE DATE OF COMMITMENT.

THE DECISION AND SENTENCE ARE SUBJECT TO APPEAL TO A HIGHER COURT BY EITHER SIDE. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 22 APR 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE091922
Document Source: ADS
Document Unique ID: 00
Drafter: SCA:SCS:WPCHASE:SAS
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D750141-0038
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197504103/baaaahpl.tel
Line Count: 125
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN SCS
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 16 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 Sep 2003 by MorefiRH>; APPROVED <05 JAN 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> sph 971001; sph 971001; sph 971001
Subject: n/a
TAGS: CASC, MX
To: MEXICO
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006